CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 10

UNITED STATES OF AMERICA EX REL. LEO STAPF, PETITIONER,

vs.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 29, 1932

CERTIORARI GRANTED APRIL 11, 1932

(36,553)

(36,553)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 10

UNITED STATES OF AMERICA EX REL. LEO STAPF, PETITIONER,

vs.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in United States circuit court of appeals, second circuit	1	1
Statement under rule 13, subdivision 4	1	1
Record from district court of the United States, Southern New York	2	1
Writ of habeas corpus	2	1
Petition for writ of habeas corpus	4	2
Return to writ of habeas corpus	7	3
Exhibits—Records from Department of Labor	10	5
Letter enclosing warrant for arrest of alien	10	5
Warrant for arrest of alien	11	6
Report as to alien	13	7
Report of hearing	15	8
Report of inspector in charge	23	14
Recommendation of district inspector	25	15
Report of alien illegally in United States	26	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C,. SEPTEMBER 12, 1932

	Original	Print
Application for warrant	27	17
Recommendation of Board of Review	29	18
Warrant for deportation	30	19
Memorandum, Bondy, J	31	20
Order dismissing writ	32	20
Petition for appeal	33	20
Order allowing appeal	34	21
Assignments of error	35	21
Citation (omitted in printing)	37	
Stipulation as to record	39	22
Clerk's certificate (omitted in printing)	40	
Opinion per curiam	41	23
Decree	42	23
Clerk's certificate (omitted in printing)	44	
Order allowing certiorari	45	24

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

M14-159

UNITED STATES OF AMERICA ex Rel. LEO STAPF, Relator,

against

BENJAMIN M. DAY, Commissioner of Immigration at the Port of New York, Respondent

STATEMENT UNDER RULE 13, SUBDIVISION 4

The petition for the Writ of Habeas Corpus was issued on the 5th day of June, 1931, and was returned on the 22nd day of June, 1931.

All parties are set forth in the caption. There have been no changes since the action was commenced.

The return of the Writ of Habeas Corpus was filed on the 22nd day of June, 1931.

Writ dismissed by Hon. William Bondy, Opinion filed June 22nd, 1931.

An order was on file on the 23rd day of June, 1931, dismissing the Writ of Habeas Corpus herein.

An appeal was taken on the 23rd day of June, 1931.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

M14-159

UNITED STATES OF AMERICA ex Rel. LEO STAPF

vs.

BENJAMIN M. DAY, Commissioner of Immigration, Ellis Island, New York

WRIT OF HABEAS CORPUS

The President of the United States of America to Benjamin M. Day, Commissioner of Immigration, and/or to whomsoever else may have custody and charge of the body of the above-named alien, Greetings:

The body of Leo Stapf, by you illegally detained and imprisoned, it is said, have you before the District Court of

the United States in and for the Southern District of New York at Room 235, U. S. Post Office and Federal Courts Building, New York at 10:30 o'clock in the forenoon on the 5th day of June 1931, together with the cause of his detention to undergo and receive what this court may deem fit and proper in the premises, and have you then and there this writ.

Witness Honorable John C. Knox, Judge of the District Court of the United States in and for the Southern District of New York this 2d day of June, in the year of our Lord [fol. 3] nineteen hundred thirty-one, and of the Independence of the United States of America the one hundred fifty-fifth.

Charles Weiser, Clerk of the District Court of the United States, Southern District of New York. (Seal.)

Writ of allowed 6/2/31.

Wm. Bondy, U. S. D. J.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR A WRIT OF HABEAS CORPUS

To the Honorable Judges of the District Court of the United States, Southern District of New York:

Your petitioner, Leo Stapf, for his petition for a writ of habeas corpus respectfully shows

That he was born on March 17, 1875 at Eichenau, Germany.

That he first entered the United States at the Port of New York as a member of the crew of the S. S. "Hansa" on or about February 15, 1923, that at that time he deserted said vessel and that he has resided continuously in the United States ever since.

That early in March 1929 he signed the ship's articles of the American vessel "Amerika" as a member of the crew for a round trip from New York to Bremerhaven, Germany, and return to New York, which contract he duly performed.

That on March 27, 1931, while employed in a hotel at Key West, Florida, he was taken into custody by United States immigration officers and accorded a hearing under a Warrant of Arrest, charging that he was unlawfully in [fol. 5] the United States in that he had remained therein for a longer time than permitted under the Immigration Act of 1924 and the regulations made thereunder.

That at the completion of his round trip voyage as a member of the crew of the S. S. "Amerika" early in April 1929 he was not admitted by the immigration authorities merely to reship foreign within sixty days or for any other limited period of time, but, on the contrary, was discharged and paid off to resume his status in the United States.

That deponent is informed and verily believes that his round trip voyage did not break the continuity of his residence in the United States, that said residence dates from 1923, that more than eight years have elapsed since said entry and that his deportation is barred by the express provisions of Section 34 of the Immigration Act of 1917.

That notwithstanding all of the foregoing, the Secretary of Labor has issued a warrant for his deportation to Germany and he now is illegally detained, imprisoned and restrained of his liberty by the respondent at Ellis Island, New York Harbor, within the jurisdiction of this Honorable Court.

Wherefore he respectfully prays that a writ of habeas corpus issue herein requiring the respondent to produce before this Honorable Court his body, together with the cau-es of his detention, to receive and abide by such order as may be made herein.

Leo Stapf.

[fol. 6] *Duly sworn to by Leo Stapf. Jurat omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS

SOUTHERN DISTRICT OF NEW YORK, ss:

V. G. MACINTOSH, being duly sworn, says that he is and during all the times herein mentioned has been an immi-

grant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus within.

In compliance with the direction of this Court, the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the [fol. 8] said alien was held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return:

1. The relator is a German alien. He last entered the United States on April 1, 1929.

2. That on March 20, 1931 the Department of Labor issued its warrant for the arrest of the relator on the ground that the relator remained in the United States for a longer time than permitted under the Act of May 26, 1924 or regulations [fol. 9] made thereunder, and on the further ground that he was not in possession of an unexpired immigration visa.

3. That on March 27, 1931, he was given a full and fair hearing under the said warrant, and on the 3rd day of April, 1931, the Department of Labor duly issued its warrant of deportation of this relator to Germany.

4. The evidence adduced at the hearing afforded the relator by the Department of Labor fully sustained the ground contained in the warrant of arrest, and the warrant of deportation. The relator admitted that he first entered this country in 1923 by deserting his ship, the S. S. "Hanser", and that on this last trip, April 1, 1929, he admits that when he was discharged from the S. S. "America", he was not in possession of any immigration visa and did not pay a head tax.

5. Deponent denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the petition for the writ, except those matters heretofore expressly admitted.

Wherefore deponent prays that the writ of habeas corpus heretofore issued herein be dismissed and the relator be remanded to the custody of the respondent.

V. G. Macintosh.

Sworn to before me this 11th day of June, 1931. Armand Chankalian, Notary Public, New York Co. Clerk's No. 339, Reg. No. 3C426. Commission expires March 30, 1933.

[fol. 10] EXHIBITS ATTACHED TO RETURN

55722/571. W.

March 21, 1931.

District Director of Immigration, Jacksonville, Florida:

Pursuant to request of the Commissioner of Immigration, Ellis Island, N. Y. H., the bureau transmits herewith

a warrant for the arrest of Leo Stapf alias Steiner, whose address is given as Kassa Marina Hotel, Key West, Florida. A copy of a report pertaining to this alien is also inclosed for your information.

(Signed) George J. Harris. George J. Harris, Acting Commissioner General. R.

Mar. 23, 1931, Mail and Files.

Incls. 48606.
" 48607.

Official copy furnished the Commissioner of Immigration, Ellis Island, N. Y. H., for his information, reference being had to his file No. 99163/17.

(Signed) George J. Harris. George J. Harris, Acting Commissioner General. JR/ds. R.

Mar. 23, 1931, Mail and Files.

[fol. 11] Warrant—Arrest of Alien

UNITED STATES OF AMERICA:

Department of Labor, Washington

No. 55722/571

To District Director of Immigration, Jacksonville, Florida, or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Leo Stapf alias Steiner who landed at the port of New York, N. Y., on or about the 15th day of April, 1929, has been found in the United States in violation of the immigration act of May 26, 1924, for the following among other reasons:

That he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder,

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in my by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to

enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1931." Pending further pro-
[fol. 12] ceedings the alien may be released from custody under bond in the sum of $500.

(Signed) W. N. Smelser.

May 23, 1931, Mail & Files.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 20th day of March, 1931.

W. N. Smelser, Assistant to the Secretary of Labor.

LVB. WSP.

[fol. 13] Passport Data for Alien Deportees

U. S. Department of Labor, Immigration Service

District File No. 3106/164. Bureau File No. 55722/571

Name of alien (in full): Leo Stapf, alias Leo Steiner.

Where detained: Key West, Fla., Monroe County Jail.

Age: 56. Date of Birth: March 17, 1875. Nationality: Germany.

Race: German. Subject of Germany. Occupation: Butcher.

Place of birth: Eichenau, Wurttemberg, Germany.

Nearest large city: Stuttgart, 100 kilometers south.

Last address in native country: Muggenkampstrasse No. 35, Hamburg, Germany.

Date left native country: March, 1929.

Last address in country of citizenship: Muggenkampstrasse No. 35, Hamburg, Germany.

Last foreign address: Same.

Date left last foreign address: March, 1929. Date of arrival in U. S.: On or about April 15, 1929.

Port of arrival: New York (Hoboken, N. J.). Name of vessel: "America".

[fol. 14] Married or single: Married. Name and address of wife or husband: Frieda Brinnker, Hamburg, Germany, address unknown.

Father's name and place of birth: Michael Stapf, born Eichenau, Wurttemberg, Germany.

Father's present address: Deceased.

Mother's maiden name and place of birth: Rosa Stapf, born Eichenau, Wurttemberg, Germany.

Mother's present address: Deceased.

Names and addresses of near relatives in U. S.: None.

Names and addresses of relatives abroad: Brother, Fritz Stapf, Eichenau.

Names and location of foreign schools attended: Public school at Lentsiedel, Wurttemberg.

Names and locations of foreign churches attended: Lutheran Church at Lentsiedel.

Where baptized: Lutheran Church Lentsiedel. Date of baptism: ——.

Name and address of last employer in country of citizenship: Hamburg-American Line on ships.

Has alien passport: No.

Other documentary evidence: Seaman's papers.

Charges against alien in W/D: Remained longer; no immigration visa.

Personal description: Height 6′ 0″. Weight: 202. Eyes: Brownish blue. Hair: Light brown. Face: Broad. Nose: Prominent. Mouth: Regular. Distinctive marks: Small line scar, right eyebrow; small brown mole left cheek; almost bald.

Ordered deported at expense of Govt.

[fol. 15] U. S. Department of Labor, Immigration Service

File No. 101/71

Report of Hearing in the Case of Leo Stapf, alias Steiner

Under Department warrant No. 55722/571.

Dated March 20, 1931.

Hearing conducted by Inspector Albert S. Caviness at Key West, Florida. Date, March 27, 1931.

Alien taken into custody at Key West, Florida, at 10:00 A. M. Mar. 27, 1931, by Patrol Insprs. Russell and Reed and now detained in Monroe County Jail, Key West, Florida.

Testimony taken and transcribed by Albert S. Caviness, Immigrant Inspector.

Said Leo Stapf, alias Steiner, being able to speak and understand the English language satisfactorily, no interpreter was employed.

Said Leo Stapf, alias Steiner, was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained [fol. 16] to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was not accepted. The alien being first duly sworn, the following evidence was presented:

Q. What is your correct name?

A. Leo Stapf on all my papers, but my full name is Leonhard Stapf.

Q. Have you ever been known by another name?

A. Yes, Leo Steiner, that is all.

Q. You are advised that under these proceedings you have the right to be represented by counsel. Do you desire to obtain the services of a lawyer?

A. I have no money now only what I earned last month. I will not get a lawyer.

Q. Do you waive your right to be represented by counsel and are you now ready to proceed with this hearing?

A. Yes, I'll tell you anything what you ask. I don't want to go to jail. I have nothing, only I want to stay here.

Q. You are further advised that any statements you make at this time may be used against you in criminal proceedings if necessary. Are you ready and willing to give complete and true information regarding yourself at this time?

A. Yes, certainly.

Q. How much money have you now?

A. $3.50, and this month's salary will be $125.00.

Q. What is your nationality?

A. German.

Q. When and where were you born?

A. March 17, 1875, at Hamburg, Germany.

Q. What is your race?

A. German.

Q. Are you a citizen of Germany at the present time?

A. Yes. I took out my first papers, but I came back to [fol. 17] New York too late and I couldn't pay my head tax any more.

Q. How old are you now?

A. 56 years.

Q. What is your occupation?

A. Butcher.

Q. Where are you employed?

A. In the Casa Marina Hotel here in Key West.

Q. Were you born right in Hamburg, Germany, or in a small place near Hamburg?

A. A small place near Hamburg. I gave it in my first papers as Hamburg.

Q. What is the name of the place where you were born?

A. Eichenau; that is about thirty-five miles from Hamburg south.

Q. How long have you been employed at the Casa Marina Hotel?

A. From the 28th of December.

Q. Have you relatives in Germany now?

A. No.

Q. Are you married or single?

A. I was married.

Q. Are you divorced or widowed?

A. I am off of my wife. I am not divorced; she is over there.

Q. What is the name and address of your wife?

A. Frieda Breinker. I don't know her address. She was in Hamburg.

Q. Was Frieda Breinker your wife?

A. Yes, I was married with her.

Q. Do you support her now?

A. No; I don't know where she is. She was gone for a long time.

Q. What was your last address in Germany?

A. Miggenkampstr. 35, Hamburg, Germany.

Q. When did you last leave your native country?

A. I guess that was in 1923, I only made a trip over there and back in 1929.

Q. What is the name of the ship you last returned on in 1929?

A. S. S. "America" of the United States Line. The S. S. "Hanser" was 1923.

[fol. 18] Q. How long did you remain in Germany in 1929?

A. Just about two and a half days. We laid at the port of Bremerhafen.

Q. On what date did you return to the United States?

A. It was in the Springtime, about March or April of 1929.

Q. Were you employed on the S. S. "America" at that time?

A. Yes, I worked in the kitchen.

Q. Did you pay the immigration head tax when you returned in 1929?

A. I liked to pay it but I couldn't. The law is so since 1924 that I can't pay. I hear so.

Q. Did you ever pay the immigration head tax?

A. No, I only paid for the first paper in the City Hall in New York.

Q. Were you discharged from the S. S. "America" or did you desert that ship?

A. I was discharged. I have discharge papers; not here but in New York. I would pay the head tax every day when I can, but I did not know where the Barge Office was to pay the head tax when I took out my first papers. Then I work out of town and could not pay it.

Q. At what port did you get your discharge from the S. S. "America" the last trip?

A. At Hoboken, N. J.

Q. What is the name and place of birth of your father?

A. Michael Stapf. He was born in Germany. He is dead now.

Q. What is the name and place of birth of your mother?

A. Rosa Schust, born in Buch, Germany. She is dead.

Q. Have you any relatives in the United States?

A. No.

[fol. 19] Q. What is the name and address of your nearest relative abroad?

A. My brother, Fritz Stap. He lives in Eichenau, Germany, where I was born.

Q. What is the name and location of the foreign school you attended?

A. Lentsiedel Public School. Lentsiedel is a larger village near Eichenau.

Q. What is the name and location of the church you attended?

A. Lutheran Church at Lentsiedel and in Hamburg, Germany.

Q. Where were you baptized or christened?

A. In the Lutheran Church at Lentsiedel, Germany.

Q. On what date were you christened?

A. I don't know for sure. When I was 14 or 15 years old.

Q. What is the name and address of your last employer in Germany?

A. I last worked for the Hamburg American Line on board ship. In Germany I worked as a butcher for Hargen, but he is dead.

Q. Have you a passport?

A. Well, I have only my discharge papers from the ships.

Q. Did you ever have a regular German passport?

A. No.

Q. Have you any documentary evidence of your citizenship?

A. Well, my seaman's papers, that's all. And I believe I have a German sailor's passport in New York, but I am not sure.

Q. At what address in New York are these papers?

A. 374 E. 14th Street.

Q. In whose care are they at the present time?

A. That is a rooming house and they have lots of room and I left my trunk there. The papers are in my trunk.

Q. At the time you were discharged from the S. S. "America" at Hoboken, N. J., about March or April of [fol. 20] 1929, were you discharged to reship foreign or were you admitted to the United States?

A. I was discharged because I only went for the trip, that's all. I wanted to work here and only had the job for one trip. I have my discharge paper in New York.

Q. By whom were you discharged?

A. By some officer from the ship in the Deck Department.

Q. Were you examined by an immigration officer there?

A. No, no; there was no immigration men there. I only showed my first papers to the chef. I signed on on the ship and I signed off on the ship. There was no immigration officer there.

Q. I have a warrant from the Department of Labor in Washington which was read and explained to you. This warrant for your arrest charges that you remained in the United States for a longer time than permitted under the

Act of May 26, 1924, or regulations made thereunder. Have you anything to say to this charge?

A. Well, I have nothing to say to. I only like to stay here in this country.

Q. Did you obtain an immigration visa from any American Consulate before you returned to the United States in 1929?

A. No; I didn't pass any American Consulate or any Immigration on the S. S. "America." Outside on the pier from the United States Line in Hoboken, N. J., there is an office where the people are hired and discharged. It is right next door to the Army recruiting office. I don't know whether or not that is an immigration office.

Q. Did you ever go to any American Consulate in Germany or any other foreign country?

A. No. We all have to work on board the ship over there. We were only two and a half days over there.

Q. You are also advised of the additional charge that you were not in possession of an unexpired quota immigration [fol. 21] visa at the time of your entry. Have you anything to say to this charge?

A. No, there is nothing to say. We are signed off and that's all when we come to Hoboken.

Q. You are further advised that authority is granted for your release from custody under bond in the sum of $500 pending the final disposition of your case. Have you any way to make this bond?

A. No, not here. If I was in New York maybe if I have a friend he would give me the $500. I am a stranger here and only have what I work for in the Casa Marina Hotel.

Description of Alien

Age 56, male, married, height 6 feet 0 inches; weight about 202 lbs.; brownish blue eyes; light brown hair; regular face; rather large nose; regular mouth; almost bald; small line scar in right eyebrow, and small brown mole on left cheek.

Summary

This alien admits that he never paid the immigration head tax to be legally admitted to the United States for residence, and that he never had an immigration visa en-

titling him to come to this country. He last entered the United States at Hoboken, N. J., about March or April of 1929 as a seaman.

The warrant for his arrest charged that he remained in the United States for a longer time than permitted under the Act of May 26, 1924, or regulations made thereunder. I am of the opinion that the charge has been sustained in this hearing, and that the additional charge, "That he is in the United States in violation of the immigration act of 1924 in that he is not in possession of an unexpired immigration visa", has also been sustained.

[fol. 22] Recommendation

It is respectfully recommended that this alien be deported to Germany, the country whence he came.

Albert S. Caviness, Immigrant Inspector.

Leo Stapf (signature of alien).

I certify that the foregoing is a true and correct record of the hearing in this case.

Albert S. Caviness, Immigrant Inspector.

[fol. 23] Transmission of Records of Warrant Hearings

U. S. Department of Labor, Immigration Service

Refer to No. 101/71

Port of Key West, Fla., March 28, 1931.

Commissioner General of Immigration, Washington, D. C. (through District Director, Jacksonville, Fla.):

Bureau file No. 55722/571

Name of alien: Leo Stapf, alias Leo Steiner, alias Leonhard Stapf.

Nationality: Germany.

Country to which deportable: Germany.

Name and address of nearest relative in that country: Wife, Freida Breinker, Miggenkamp Str. 35, Hamburg, Germany.

If deportable to Mexico, through or to what port: ——.

Charges additional to those contained in warrant: Visible.

Telegraphic decision to (Port) requested.

Whether detained at Government expense and if so, cost of maintenance: Detained in Monroe County Jail, Key West, Fla., at the expense of the Government at 65c. per day.

[fol. 24] Whether released under bond: No.

Passport status: Not in possession of passport or any other documentary evidence.

Comment

This alien admits that he deserted at New York from the S. S. Hanser about Spring of 1923 and that he made a trip to Germany and again was discharged without inspection in March or April of 1929.

The Warrant charges "Remained Longer" and the additional charge "Visible" has been added and I am of the opinion that both charges have been sustained in this hearing.

Alien entered March or April, 1929.

New York from SS. "America."

Claude Albury, Inspector in Charge.

[fol. 25] Office of District Director, Jacksonville, Florida

March 30, 1931.

Key West, Fla., file No. 101/71.
Jacksonville file No. 3106/164.
Bureau file No. 55722/571.

Attached letter from the Inspector in Charge at Key West, Florida, dated the 28th instant, respectfully forwarded the Commissioner-General of Immigration, Washington, D. C., together with record of hearing, Form 617, and Form 522 in duplicate, this office concurring in the recommendation of the examining inspector that the alien Leo Stapf, alias Steiner, be ordered deported to Germany, the country of his nativity, on the ground that he has remained longer than permitted under the Act of 1924 and regulations made thereunder.

It is believed that the additional charge "Visible", is untenable in this case for the reason that the alien entered as a seaman and was discharged to reship foreign, and further, that even if the charge were tenable it could not be sustained for the reason that the alien was not con-

fronted with the fact that such additional charge would be lodged against him.

Passport will be required for the deportation of this alien but same will be secured locally.

It is respectfully requested that seamanship privilege be accorded this alien, reshipment one way foreign to be considered a satisfactory compliance with the terms of the warrant of deportation.

Alien entered: New York, N. Y., Mar. or Apr. 1929, SS. "America."

Thos. V. Kirk, District Inspector of Immigration, Jacksonville District.

99163/17

[fol. 26] Report of Alien Illegally in the United States

Full name of alien, age and nationality: Leo Stapf, alias Leo Steiner, 44, German.

His present home address: Kassa Marina Hotel, Key West, Florida.

His present business address: ——.

Name of ship on which alien arrived: Unknown.

Date and port of arrival in U. S.: New York, April, 1929.

Whether as passenger or member of crew: Crew.

Reasons for belief that alien is in the U. S. in violation of Law: His wife informed the complainant that the above had deserted ship.

Hans Spirgatis, being duly sworn, deposes and says that he has read the foregoing report and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true.

(Signature:) Hans Spirgatis, (Address:) 349 85th St., Brooklyn, N. Y.

Sworn to before me this 17th day of Mar., 1931.
Insp. John P. Loftus.

[fol. 27] Application for Warrant of Arrest under Section 19 of the Act of February 5, 1917

U. S. Department of Labor, Immigration Service

99163/17

(Place:) Ellis Island, N. Y. H., March 18, 1931.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Leo Stapf, alias Steiner, age 44, native and citizen of Germany, arrived at New York, as member of the crew of unknown ship, April, 1929; not verified; the alien named in the attached certificate, upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants. Application for a warrant based on conviction for a crime committed in the United States should be accompanied by a copy of the alien's commitment obtained from the warden of the institution wherein he is confined, or a certificate of conviction obtained from the clerk of the court wherein sentence was pronounced.)

(2) The present location and occupation of above-named alien are as follows:
Kassa Marina Hotel, Key West, Fla.

[fol. 28] Remained Longer

From attached copy of sworn statement, in duplicate, it *is* appears that above named alien is in the United States in violation of law in that he has remained in the United States for a longer period than permitted under the immigration act of May 26, 1924, or the regulations made thereunder.

Complaint indicates the advisability of the issuance of a warrant of arrest prior to approaching alien.

Please transmit warrant to Key West, Fla., for service.

Pursuant to Rule 18 of the Immigration Regulations there is attached hereto and made a part hereof the certificate presented in subdivision B of said Rule, as to the landing or entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

(Signature:) Byron H. Uhl, (Official Title:) Assistant Commissioner of Immigration, New York District. FH:RS.

Inc. No. 97039.

[fol. 29] 55722/571—Jacksonville

April 3, 1931.

In re Leo Stapf, alias Steiner, alias Leonhard Stapf, 56.

This case comes before the Board of Review in warrant proceedings.

No hearing.

This record relates to a native of Germany, German race, age 56, male, married, butcher, who last arrived at the port of New York on April 1, 1929, as a member of the crew of the S/S "America" and was discharged.

Nearest relative abroad: Wife, Frieda Breinker, Miggenkamp Str. 35, Hamburg, Germany.

Hearing was held at Key West, Florida, March 27, 1931, before Immigrant Inspector Albert S. Caviness, and alien is detained at the expense of this Service.

This alien claims to have first come to the United States in 1923 on the SS. "Hanser". While it is not definitely stated in the record whether or not he was a seaman at that time the Inspector in Charge at Key West states that the alien admits that he deserted the SS. "Hanser" in the spring of 1923. The alien admits that he was not in possession of an immigration visa at the time of last entry and did not pay head tax. The additional charge was placed against him "that he was not in possession of an immigration visa". This charge is not applicable.

It is recommended that alien be deported to Germany at government expense on the ground:

That he is in the United States in violation of the Immigration Act of 1924 in that he has remained in the United

States for a longer period of time than permitted under the said Act or regulations thereunder.

[fol. 30] Warrant—Deportation of Alien

United States of America, Department of Labor, Washington

No. 55722/571

To District Director of Immigration, Jacksonville, Florida; Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United States Immigration Service:

Whereas, from proofs submitted to me Assistant to the Secretary, after due hearing before Immigrant Inspector Albert S. Caviness, held at Key West, Florida, become satisfied that the alien Leo Stapf, alias Steiner, alias Leonard Stapf, who landed at the port of New York, N. Y. ex SS. "America", on the 1st day of April, 1929, has been found in the United States in violation of the immigration act of May 26, 1924, to wit, of February 5, 1917, to wit, that he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder, and may be deported in accordance therewith:

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Germany the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1931" including the expense of an attendant, if necessary. The alien may be permitted to depart volun-[fol. 31] tarily, or ship foreign one way, without expense to the United States, to any country of his choice, except foreign contiguous territory or adjacent islands, under safeguards, such departure to be verified, and to be considered a satisfactory compliance with the terms of this warrant, the alien to be advised that acceptance of this privilege does not entitle him to reenter the United States.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 3rd day of April, 1931.

(Signed) W. N. Smelser, Assistant to the Secretary of Labor.

In United States District Court

Memorandum of Hon. William Bondy, J.

The attorney for the relator conceding that the facts herein are ruled by the decision in U. S. ex rel. Fernandez v. Day affirmed by the Circuit Court of Appeals, June 8, 1931, the writ must be dismissed.

Wm. Bondy, U. S. D. J.

June 22, 1931.

[fol. 32] In United States District Court

M14-159

United States of America ex Rel. Leo Stapf, Relator,

against

Benjamin M. Day, Commissioner of Immigration, Respondent

Order Dismissing Writ—June 23, 1931

The writ of habeas corpus heretofore sued herein, having regularly come on to be heard before me on the 12th day of June, 1931, and after hearing J. Waisman, attorney for the relator, in support thereof, and David Paley, Assistant United States Attorney for respondent, in opposition thereto, and due deliberation having been had, it is

Ordered that the writ of habeas corpus be, and the same hereby is dismissed and the relator Leo Stapf, be and he hereby is, remanded to the custody of the respondent.

Wm. Bondy, United States District Judge.

[fol 33] In United States District Court

[Title omitted]

Petition for Allowance of Appeal

The petitioner, Leo Stapf, by his attorney, J. Waisman, feeling aggrieved by the Order and Judgment made on the 23 day of June, 1931, by this Court, dismissing the writ of

habeas corpus, herein, does hereby appeal from the order and judgment of this Court to the United States Circuit Court of Appeals for the Second Circuit, and prays that this appeal may be allowed and the transcript of the record of the proceedings and papers upon which the said order and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, June 23, 1931.

J. Waisman, Attorney for Relator. Office and P. O. address: 38 Park Row, Borough of Manhattan, New York City.

To George Z. Medalie, U. S. Attorney for the Southern District of New York.

To Charles Weiser, Clerk of the U. S. District Court, Southern District of New York.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

On reading the petition of Leo Stapf, made by his attorney, J. Waisman, dated June 23, 1931, for appeal and consideration of the Assignment of Errors presented herewith, it is

Ordered that the appeal herein be allowed as prayed for and that pending its determination the said Leo Stapf, shall be released from custody upon giving bail by bond or undertaking in the sum of fifteen hundred dollars, and it is

Further ordered that a certified copy of the record of all proceedings herein be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated New York, June 23, 1931.

Wm. Bondy, U. S. D. J.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the relator in the above-entitled cause and files the following Assignment of Errors which he will rely

upon in the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this court on the 23rd day of June, 1931.

The court erred in dismissing the writ of habeas corpus, because:

1. The relator, a seaman, entered the United States in 1923, and never having left the United States except as a member of the crew of an American vessel making a round trip from a port of the United States and back again, has never left the United States, nor relinquished his domicile within the meaning of the law.

2. The relator being a seaman who entered the United States unlawfully by deserting his ship, and having resided here for more than three years prior to his arrest, his deportation is barred by Section 34 of the Act of 1917.

[fol. 36] Whereas, by the Law of the Land, the said writ of habeas corpus should have been sustained, now the said Leo Stapf, by his attorney, J. Waisman, prays that the errors aforesaid, and other errors in the record and proceedings, the judicial determination and decision aforesaid made on the 23rd day of June, 1931, be set aside and for naught be held and esteemed, and that the writ of habeas corpus herein be sustained.

Dated New York, June 23, 1931.

J. Waisman, Attorney for Relator. Office and P. O. address: 38 Park Row, Borough of Manhattan, New York City.

[fols. 37 & 38] Citation, in usual form, omitted in printing.

[fol. 39] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of the record of the said Dis-

trict Court in the above-entitled matter as agreed on by the parties.

Dated November 16, 1931.

J. Waisman, Attorney for Relator. George Z. Medalie, United States Attorney, Attorney for Respondent.

[fol. 40] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 41] In United States Circuit Court of Appeals for the Second Circuit, October Term, 1931

No. 260

Argued January 5, 1932. Decided January 5, 1932

United States ex rel. Leo Stapf, Relator-Appellant,

v.

Edward Corsi, as Commissioner of Immigration, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Augustus N. Hand, and Chase, Circuit Judges

J. Waisman, of New York City, for appellant.
Murray I. Gurfein, of New York City, for appellee.

Opinion

Per Curiam:

Order affirmed in open court.

[fol. 42] In United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the courtrooms, in the Post Office building, in the city of New York, on the 11th day of January, one thousand nine hundred and thirty-two.

UNITED STATES ex rel. LEO STAPF, Relator-Appellant,

v.

EDWARD CORSI, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

DECREE—Filed Jan. 12, 1932

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 43] [File endorsement omitted.]

[fol. 44] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 45] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 11, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,553. U. S. Circuit Court of Appeals, Second Circuit. Term No. 10. United States of America ex rel. Leo Stapf, petitioner, vs. Edward Corsi, Commissioner of Immigration at the Port of New York. Petition for a writ of certiorari and exhibit thereto. Filed February 29, 1932. File No. 36,553.

PETITION FOR A WRIT OF CERTIORARI

FILE COPY

FILED
FEB 29 1932
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. [redacted] 10

UNITED STATES OF AMERICA ex REL. LEO STAPF, PETITIONER,

vs.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York.*

(36,553)

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Questions presented	1
Statement	3
Specification of errors to be urged	4
Reasons for the petition	4
Prayer for writ	5
Affidavit of counsel	5
Brief in support of petition	7
Argument:	
Point I. Stapf's return to New York in 1929 was not an entry or arrival in the United States from a foreign country within the immigration laws; more than five years had elapsed since his true entry in 1923, and his deportation was barred by Sections 19 (9 U. S. C. 155) and 34 (8 U. S. C. 166) of the Immigration Act of February 5, 1917	7

Table of Cases Cited.

Chinese Cabin Waiter, 13 Fed. 286	9, 11
Chinese Laborers on Shipboard, 13 Fed. 291	9, 11
Claussen, U. S. ex rel. v. Curran, 16 Fed. (2d) 15	13
Claussen, U. S. ex rel. v. Day, 279 U. S. 398	2
Claussen v. Curran, 279 U. S. 398	3
Hersvik, Matter of, 1 Fed. (2d) 449	10, 23
Kirk v. Lawrensen, 24 Fed. (2d) 64	5, 16
Matsutaka v. Carr, 47 Fed. (2d) 601	5, 21, 23
Matthews v. Offley, Fed. Cas. No. 9290	8
Nagle v. Hansen, 17 Fed. (2d) 557	11
Philippides v. Day, 51 S. Ct. 358	3, 19
Rios v. Day, 24 Fed. (2d) 654	18
Ross, In re, 140 U. S. 453	8
T. Nagata, Ex Parte, 11 Fed. (2d) 178	17, 23
Weedin v. Banzo Okada, 2 Fed. (2d) 321	5, 10, 23

STATUTES CITED.

Page

Immigration Act of February 5, 1917, Sec. 19 (8 U. S. C. 155) 2, 7, 13, 14, 19
Immigration Act of February 5, 1917, Sec. 23 (8 U. S. C. 168) 19, 20, 21
Immigration Act of February 5, 1917, Sec. 34 (8 U. S. C. 166) 2, 3, 7, 10, 14, 19
Immigration Act of 1924, Sec. 14 (8 U. S. C. 214) 4
15 (8 U. S. C. 215) 20, 21
19 (8 U. S. C. 166) 19, 20, 21
3(5) (8 U. S. C. 203) 20, 21
Immigration Laws and Rules of March 1, 1927, Rule 6, Par. 2, Subd. I 21
Revised Statutes, Sec. 4573 (46 U. S. C. 674) 7
4574-5 (46 U. S. C. 675-6) 7
4576 (46 U. S. C. 677) 7
4577 (46 U. S. C. 678) 8
4578 (46 U. S. C. 679) 8
4579 (46 U. S. C. 681) 8

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 739

UNITED STATES OF AMERICA ex Rel. LEO STAPF, Petitioner,

vs.

EDWARD CORSI, Commissioner of Immigration at the Port of New York, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner, by his attorney, Harold Van Riper, respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above-entitled case.

Questions Presented.

During the World War and after its close, while the United States was endeavoring to man its merchant marine, alien seamen were encouraged to become members of the crews of American vessels because there

were not enough American seamen available. To accomplish this purpose a large number of alien seamen deserted their vessels and entered and faithfully worked in our service. It is a matter of common knowledge that our merchant marine did not attain the magnitude then anticipated, wherefore, many of such seamen secured positions or established businesses ashore, married and have children. All those who came prior to July 1, 1924, and have not since been outside the territorial limits of the United States, are immune from deportation by statutory limitation (Secs. 19 & 34, Act of 1917, 8 U. S. C. 155 & 166).

The question involved herein is as to whether, if such an alien, in accordance with the provisions of our laws relating to our merchant marine, signs the ship's articles of an American vessel at an American port for, and makes, a round trip from said American port back to said American port, and said vessel touches at a foreign port enroute, upon such return to said American port he is to be regarded as a "*seaman of the United States*" within the meaning of the laws relating to the merchant marine, or is to be regarded as an "*alien seaman*" within the meaning of the immigation laws.

This is not the question that was before this Honorable Court in *U. S. ex rel. Claussen* v. *Day* (279 U. S. 398), wherein the proceedings were brought not under Sec. 34 of the Act of 1917 (8 U. S. C. 166) applicable to seamen, but under Sec. 19 thereof (8 U. S. C. 155), applicable to aliens in general, on the ground that the alien had been convicted of a crime within five years

after an entry; nor is it the question that was involved in *Phillipides* v. *Day,* 51 S. Ct. 358, which related to a seaman who had entered the United States subsequent to July 1st, 1924, and as to whom it was held that the three-year limitation contained in Sec. 34 of the 1917 Act (8 U. S. C. 166) did not apply inasmuch as he had originally entered and therefore was properly deportable under the Immigration Act of 1924.

Statement.

The relator-appellant is a seaman of the German race. In February, 1923, he entered the United States as a member of the crew of the S. S. "HANSA" (R. 17 & 29), and has resided here continuously ever since. In March, 1929, at New York, under our laws relating to the merchant marine, he signed the ship's articles of the American vessel "AMERIKA", as a member of its crew for a round trip continuous voyage from New York to New York, touching at Germany enroute, which contract he duly performed (R. 18).

The government is seeking to deport him on the ground that he has remained in the United States for a longer time than permitted under the Immigration Act of 1924 (R. 30).

The Secretary of Labor's warrant of arrest issued herein on or about March 20, 1931 (R. 11).

The Secretary of Labor's warrant of deportation issued herein on or about April 3, 1931 (R. 30).

The decision of Hon. William Bondy, D. J., citing the unreported case of *Fernandez* v. *Day,* which in turn cites *Claussen* v. *Curran,* 279 U. S. 398, appears at

page 31 of the record herein, and is dated June 22, 1931.

The per curiam affirmation thereof by the Second Circuit Court of Appeals appears at page 41 of the record herein, and is dated January 5, 1932.

The order of the Second Circuit Court of Appeals herein sought to be reviewed is dated January 11, 1932, and appears at page 41 of the record herein.

The mandate already has gone down from the Second Circuit Court of Appeals to the United States District Court for the Southern District of New York.

Specification of Errors to be Urged.

The errors which the petitioner urges as ground for the granting of the writ of certiorari and for reversal of the judgment of the Circuit Court of Appeals for the Second Circuit are:

1. The Circuit Court of Appeals erred in sustaining the order of the Trial Court.

2. It erred in holding that petitioner is subject to deportation under Sec. 14 of the Immigration Act of 1924 (8 U. S. C. 214) as having "remained in the United States for a longer time than permitted under the said Act or regulations made thereunder".

Reasons for the Petition.

The reasons for which the petition is presented are:

(1) That the Circuit Court of Appeals has decided an important question of Federal law, which has not been, but should be, settled by this Court (Rule 35).

(2) That the Circuit Court of Appeals for the Second Circuit has rendered a decision in conflict with decisions of the Circuit Court of Appeals for the Ninth Circuit on a similar question, namely: *Matsutaka* v. *Carr*, 47 F. (2d) 601, *Weedin* v. *Okada*, 2 F. (2d) 321, and a decision of the Fifth Circuit, *Kirk* v. *Lawrensen*, 24 F. (2d) 64.

WHEREFORE petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submits his brief hereto attached in support of this petition.

Respectfully submitted,

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York, N. Y.*

UNITED STATES OF AMERICA,
State and Southern District of New York, ss:

Harold Van Riper, being duly sworn, says that he is a member of the bar of the Supreme Court of the United States, is the attorney for the petitioner herein, and is duly authorized by said petitioner to make and execute this petition on his behalf; that he has read the foregoing petition and knows the contents thereof, and that the matters therein stated are true to the best of his knowledge, information and belief. Deponent certifies that he has examined the foregoing petition and the record herein, and that in his opinion it is well

founded, meritorious, and entitled to the favorable consideration of this Court.

HAROLD VAN RIPER.

Sworn to before me this 19th day of February, 1932.

[SEAL.] EMANUEL WEITZER,
Notary Public.

N. Y. Co. Clerk No. 734, Reg. No. 2W46.
Kings Co. Clerk No. 242, Reg. No. 228.
Term expires March 31, 1932.

BRIEF IN SUPPORT OF FOREGOING PETITION.

Point I.

Stapf's return to New York in 1929 was not an entry or arrival in the United States from a foreign country within the immigration laws; more than five years had elapsed since his true entry in 1923, and his deportation was barred by Sections 19 (8 U. S. C. 155) and 34 (8 U. S. C. 166) of the Immigration Act of February 5, 1917.

In March, 1929, Stapf had been in the United States for more than five years and was not subject to removal therefrom under any provision of the immigration laws.

At that time, in New York, he signed the articles and became a seaman of the United States, not an alien seaman, on an American vessel for a round trip voyage from New York back to New York, touching at a foreign port enroute, upon the termination of which voyage he was entitled to be discharged and paid off without any obligation under our laws to reship foreign within sixty days or any other period.

Revised Statutes, Section 4573 (46 U. S. C. 674), requires that before clearance is granted to any vessel bound on a foreign voyage, the captain shall deliver to the Collector of Customs a sworn crew list.

Sections 4574-5 (46 U. S. C. 675/6) contain provisions respecting such list.

Section 4576 (46 U. S. C. 677) requires that the master of any such vessel, on return to an American

port, shall exhibit the certified copy of the crew list with which he sailed out, and shall produce each person whose name appears thereon; and he and the owner shall be fined $400 for the failure to produce any such person, unless it is shown that such person has been properly discharged abroad with the consent of a consular official or has died or absconded or has been forcibly impressed into other service.

Section 4577 (46 U. S. C. 678) requires that the consular official shall provide for sustenance and passage to some American port for any seaman of the United States found destitute in such official's respective district. Under this section, *Matthews* v. *Offley*, Fed. Cas. No. 9290, was decided, it being held that aliens employed on American vessels are seamen of the United States within the meaning of this section. See, also, *In re Ross* (140 U. S. 453).

Section 4578 (46 U. S. C. 679) requires all masters of American vessels to transport such seamen back to an American port when so instructed by a consular official; and Section 4579 (46 U. S. C. 681), provides for allowances for such transportation.

The protective provisions of the Federal statutes above referred to relate to and enure to the benefit of "American seamen" or "seamen of the United States" as a general class, without regard to whether they are American or alien citizens.

Matthews v. *Offley*, Fed. Cas. No. 9290, and other cases herein cited and discussed.

And the solicitation for the welfare of American seamen—including persons of alien citizenship but

serving as seamen upon American vessels—shown by the statutes above referred to, and particularly the provisions requiring that they be cared for by American consuls, and, when stranded abroad, be returned to the United States, is utterly inconsistent with any theory that, when arriving back at the end of a voyage as a member of the crew of an American vessel, without having left the vessel abroad, such a seaman is to be considered an immigrant.

The case of the *Chinese Cabin Waiter* (13 Fed. 286), was under an act of Congress prohibiting the master of a vessel for bringing into the United States any Chinese laborer from any foreign port or place. The court construed the act to mean the prohibiting of bringing any such laborer embarking at a foreign port or place for the United States, and not to apply to the arrival in port of such a laborer already on board the vessel, who had shipped out on the same when it left the American port, as a member of its crew, and merely arrived back with the ship. The court, at page 289, said:

> "And in this connection it should not be overlooked that the petitioner, while on board the steamship as one of its crew, was within the jurisdiction of the United States, at all times under their protection, and amenable to their laws. An American vessel is deemed to be a part of the territory of the State within which its home port is situated, and as such a port of the territory of the United States."

In *Chinese Laborers on Shipboard*, 13 Fed. 291, the last-cited case was followed and the same rule held to

control, although the petitioners had been permitted to land temporarily at a foreign port during the voyage, but without, however, any termination of their relation as members of the crew.

The case of *Matter of Hersvik*, 1 F. (2d) 449, arose under Section 34 of the Immigration Law of February 5, 1917 (8 U. S. C. 166), which contains a special limitation of three years within which deportation proceedings may be had with respect to alien seamen who land unlawfully in the United States. The petitioners therein originally entered the country as seamen and thereafter resided in the United States or shipped on American vessels for a period of more than three years. Thereafter they shipped as members of the crew of an American vessel out of San Pedro, California, on a voyage to Chilean ports and return. They were apprehended at the return end of the voyage and ordered deported, and obtained a writ of *habeas corpus*. The court sustained the writ and ordered the petitioners released, saying, at page 450:

> "Petitioners do not come within the class known as immigrants, defined in Section 3 of the Immigration Act of 1924 as being aliens 'departing from any place outside the United States destined for the United States,' *for they did not depart from any foreign place, but departed from the United States for a continuous voyage which ended in a United States port.*" (Our italics.)

The case of *Weedin* v. *Banzo Okada*, 2 F. (2d) 321, decided by the Circuit Court of Appeals of the Ninth Circuit in November, 1924, is directly in point on the

circumstances of Stapf's return in March, 1929, and on the question of the effect of such arrival under the immigration laws. Okada entered the United States unlawfully in 1917 and continued to reside here until June, 1921; thereupon he shipped as a member of the crew of an American vessel for a voyage from ports of the United States to Oriental ports and return. At the close of the voyage, on August 26, 1921, he returned to the United States with the vessel, as still a member of the crew thereof, and continued to reside here until apprehended, on April 24, 1924. The Circuit Court of Appeals held that such arrival at the end of the voyage was not an arrival from a foreign country, and that, accordingly, Okada had not entered the United States within five years prior to the attempted deportation. The court analyzed the statutes bearing upon the question and cited the *Chinese Cabin Waiter* and *Chinese Laborers on Shipboard cases*, and at page 322, said:

> "If the appellee had remained at all times on shipboard, it would scarcely be contended that he left the United States, and the fact that he was permitted to land at Honolulu for a few hours, by the captain, did not change his status."

In the case at bar the record is absolutely silent as to whether or not Stapf went ashore or remained on board the vessel when it reached the German port.

Another case of the same kind, *Nagle* v. *Hansen*, 17 F. (2d) 557, was decided by the Ninth Circuit Court of Appeals, February 21, 1927, in which it was said:

> "Hansen shipped as a seaman from New York on a voyage to Buenos Aires and return. The

ship, however, took on a new cargo at Buenos Aires for Holland, and when that cargo was discharged, instead of returning to New York, it went to what is said to be its home port of Christiana, Norway. The vessel stayed in Norway, but, as Hansen was entitled under the shipping articles to a return passage to New York, the company paid his fare and he arrived at the port of New York on July 5, 1921, on the ship *Frederik VIII.* Upon his arrival at New York, he was allowed to enter as being 'admitted in transit,' this phrase being apparently intended to indicate that he was admitted as a seaman who intended to reship foreign. When he testified at the deportation proceedings, he said: 'I came in as a sailor, and expected to reship at any time. My occupation is that of a seafaring man.' Prior to shipping on the voyage from New York to Buenos Aires and return, Hansen had made several trips as a seaman between the same ports. There was no question made that his established calling was, as he described it, that of a seafaring man. * * *"

"The contention that Hansen was not a 'seaman' when he arrived in New York on July 5, 1921, and hence not entitled to claim the benefit of the three-year period to bar deportation, seems overtechnical. It may be admitted that a person whose occupation is that of a seaman may not claim to answer to the class specified in section 34, Immigration Act, above quoted, where he first enters this country as a passenger on a ticket of his own purchase. In this case Hansen had shipped several times out of New York for voyages to Buenos Aires and return. The ship upon which he made his last trip contracted with him for employment on a voyage between the

> ports mentioned. Deviation from that voyage, resulting in Hansen being landed at the ship's expense at the port of contracted departure, should not be held, we think, to deprive him of *the character which he had when he entered upon the voyage,* and as to which there could have been no possible question, had the ship returned to the port of New York." (Our italics.)

However, on December 6, 1926, the Circuit Court of Appeals, Second Circuit, decided the case of *U. S. ex rel. Claussen* v. *Curran,* 16 Fed. (2d) 15, which was a case wherein a seaman had entered unlawfully in 1912, never had been absent from the United States except as a member of the crews of American vessels for round trips from American ports back to American ports, and whose last foreign voyage as a member of the crew of an American vessel terminated at Boston on March 26, 1918. A little more than three years thereafter he pleaded guilty in Maine to the crime of manslaughter, and was sentenced to more than one year's imprisonment. At the end of his imprisonment the Secretary of Labor sought to deport him under Section 19 of the Immigration Act of 1917 (8 U. S. C. 155), on the ground that he had been sentenced to imprisonment for more than a year within five years after his entry into the United States. A writ of *habeas corpus* was sued out on the ground that Claussen's original unlawful entry had taken place in 1912, that his round trips as a member of the crews of American vessels had not broken the continuity of the period, that more than five years had elapsed between his entry

and the date of his sentence in 1921, and that, therefore, his deportation was barred by the five-year limitation fixed by said Section 19 of the 1917 Act, and not by the three-year limitation fixed by Section 34 thereof. In this decision the Circuit Court said:

> "* * * The exact question is whether his return on the American schooner from the foreign cruise for which he had shipped from the United States is to be deemed an entry into the United States, within the above-quoted Section 19 of the Act. The common statement which was the basis for the decisions in the *Chinese Laborer* (C. C.), 13 F. 291, and *Chinese Cabin Waiter* (C. C.), 13 F. 286, that an American vessel is to be deemed American soil, is but a fiction, and is not of universal application. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 38 S. Ct. 28, 62 L. Ed. 189; *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306.
>
> Clearly he was not in the United States during the voyage; equally clearly he entered the United States in March, 1918. *The question before us is neither, as in Weedin* v. *Banzo Okada* (C. C. A.), 2 F. (2d) 321, *whether within other sections of the Act that entry was legal or illegal, nor, as in petition of Hersvik* (D. C.), 1 F. (2d) 449, *whether by making such a voyage he lost any rights given under other sections of the Act to return to the United States. See, too, ex parte T. Nagata* (D. C.), 11 F. (2d) 178.
>
> *We are concerned only with the meaning of the word in connection with the deportation provision for the commission of crime, and under that section, in our judgment, the word should*

> *be given the broadest interpretation.* • • •"
> (Italics ours.)

Judge Learned Hand dissented. Thereafter a writ of certiorari was granted and in its decision, 279 U. S. 398, this Honorable Court said:

> "The question for decision is whether petitioner was sentenced within five years after his entry into the United States. • • • It is immaterial whether he was entitled to admission or whether he lawfully entered. The cause for which his deportation was ordered arose *after* entry." (Italics ours.)

From all of the foregoing it clearly is to be seen that the question as to whether or not Section 34 barred the deportation of a seaman more than three years after an illegal entry, was not before the courts in the *Claussen case.*

Judge Learned Hand's short dissenting opinion in the *Claussen case,* which case was decided solely on the question of the commission of a crime within five years after an entry, nevertheless is directly in point with the case at bar:

> "It seems to me that there is strong reason to distinguish the return of a seaman at the end of a voyage for which he has signed the articles, and on the same ship on which he left, from a reentry one has not bound oneself to make when one went away. A seaman is bound for the voyage, once he signs on; desertion is at least a civil wrong. To say that every coasting vessel or fishing smack which passes the league limit subjects all aliens on board to all condi-

> tions of admission into the United States, including, I should suppose, the quota law, seems to me an impracticable interpretation of the law; yet I can see no escape from it, if my brothers are right. It means that American crews must be made up of citizens and citizens only. That I should have thought was the opposite of the plain intention of Congress as respects our mercantile marine.
>
> "Nor can I see that we can escape considering the conflicts which our ruling raises with other statutes because they are not before us here. I can see no answer to the dilemma put by Rudkin, J., in *Weedin* v. *Banzo Okada* (C. C. A. 9) 2 F. (2d) 321, and that case is flat for the relator at bar."

It is to be noted that all of the foregoing cases relate to aliens whose original illegal entries into the United States as seamen occurred prior to July 1, 1924, the effective date of the Immigration Act of 1924, and whose last voyages as seamen of the United States on American vessels, prior to arrest in deportation proceedings, also were concluded before said date.

The first important case involving an alien who illegally entered as a seaman prior to July 1, 1924, and whose last voyage as a seaman of the United States from an American port back to an American port took place subsequent to July 1, 1924, was *Kirk* v. *Lawrenson*, C. C. A. 5, Jan. 23, 1924, in which the Court said:

> "(2) Appellee was not of an undesirable class, was qualified for admission under the Immigration Act of 1917, and was not subject to deportation for crime or for any other reason, unless it be that his return from a foreign

voyage in 1926 was unlawful. It is contrary to all reason to suppose that every return of an alien seaman having rights as an American citizen, limited and qualified though such rights may be, from a foreign voyage to a port of the United States on an American vessel, should be within the ordinary rule that every entry constitutes a new entry. As was pointed out by the Circuit Court of Appeals for the Ninth Circuit in *Weedin* v. *Banzo Okada*, 2 F. (2d) 321, to so hold would result in an irreconcilable conflict between R. S. § 5363 (18 U. S. C. A. § 486), which punishes the master of any vessel who without cause intentionally leaves a seaman in a foreign port, and section 8 of the Immigration Act of 1917 (8 U. S. C. A. § 144), which punishes the bringing into the United States of an alien not duly admitted. *Nagle* v. *Hansen* (C. C. A.) 17 F. (2d) 557, decided by the same court, is also authority for the ruling of the district court in the instant case.

The opposite view finds some support in United States v. *Curran*, 16 F. (2d) 15, *decided by the Circuit Court of Appeals for the Second Circuit; but that decision apparently recognizes that the case of Weedin* v. *Banzo Okada, supra, was correctly decided, and does not proceed on the theory that an alien seaman by making a foreign voyage on an American vessel loses any rights given him by statute, although it does hold that conviction of a crime involving moral turpitude overrides all such rights.*" (Our italics.)

See, also, *ex Parte T. Nagata* (D. C.), S. D. Cal., Feb. 19, 1926, 11 F. (2d) 178.

The point of divergence from the doctrine so long established, as aforesaid, was the decision on December 6, 1926, by the Second Circuit Court of Appeals of *Rios* v. *Day*, 24 F. (2d) 654, which, we contend, rests upon a misinterpretation of its previous decision in *Claussen* v. *Curran, supra,* affirmed by this Honorable Court.

In the *Rios case,* the sole question before the Court was as to whether or not the period of limitation should run from the date of his unlawful entry in 1918, upon the completion of a round trip on an American vessel from an American port back to an American port. The Court said:

> "While, under Section 34 of the Immigration Act of 1917, deportation of an alien seaman could not be effective unless some independent ground for deportation existed (*U. S. ex rel. Gioia* v. *Curran* (D. C.), 11 F. (2d) 904; *In re Lackides* (D. C.), 10 F. (2d) 980), under Section 14 of the act of 1924, deportation may be effected because of the fact that the seaman remained here longer than the *temporary* period allowed. This appellant abandoned his calling as a seaman, which alone gave him the right to stay for a *temporary* period only. If he remained longer, by virtue of Section 19, he was subject to deportation. His last entry in September, 1925, controls the limitation as to when he may be deported. *U. S. ex rel. Claussen* v. *Curran* (C. C. A.) 16 F. (2d) 15. His other entries are unimportant." (Italics ours.)

Here lies the error, because neither Rios in the cited case, nor Stapf in the case at bar, were, or could have

been, admitted for a "temporary" period, as a reading of the applicable statutes will show.

Section 19 of the 1924 Act (8 U. S. C. 166) is a reenactment of the relevant portion of Section 32 of the Act of February 5, 1917, and reads as follows:

> "SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel *arriving* in the United States *from any place outside thereof,* shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal or deportation of such alien from the United States." (Our italics.)

In the United States Code said section is consolidated with Section 34 of the 1917 Act barring the deportation of seamen more than three years after entry, but it has been held that such statutory bar does not apply to seamen whose original entry into the United States occurred subsequent to July 1, 1924, the effective date of the Immigration Act of 1924. *Philippides* v. *Day,* 51 S. Ct. 358.

Section 33 of the 1917 Act (8 U. S. C. 168) restricted entries under Section 32 thereof, and now restricts entries under Section 19 of the 1924 Act. The relevant portion reads as follows:

> "* * * That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel *arriving* in the United States *from any foreign port or place,* unless duly ad-

> mitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided,* That in came any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admisible under any law, convention, or treaty from remaining permanently in the United States, * * *"

To make possible the temporary admission necessary to permit entry under Section 33 of the 1917 Act and Section 19 of the 1924 Act, Congress enacted Section 3 (5) of the 1924 Act, which reads as follows:

> "SEC. 3. When used in this act the term 'immigrant' means any alien *departing from any place outside the United States* destined for the United States, except * * * (5) a *bona fide* seaman serving as such on a vessel arriving at a port of the United States and *seeking to enter temporarily* the United States solely in the pursuit of his calling as a seaman * * *" (8 U. S. C. 203). (Our italics.)

and Section 15 thereof, which reads as follows:

> "SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause 5 * * * of Section 3 * * * shall be for such time as may be by regulations prescribed * * * to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States" (8 U. S. C. 215).

The regulation promulgated by the Secretary of Labor applicable to alien seamen "departing from any

place outside the United States" and "seeking to enter *temporarily* the United States" under Section 33 of the 1917 Act and Sections 19, 3 and 15 of the 1924 Act, at the time of Stapf's return in March, 1929, was Par. 2, Subdivision I, Rule 6 of the Immigration Laws and Rules of March 1, 1927, reading as follows:

> "Where a *bona fide* alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter *temporarily* the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely *in pursuit of his calling as a seaman,* engages in any other calling or occupation for hire or profit, or enters the coastwise trade of the United States, or remains within the United States for more than 60 days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act." (Our italics.)

Certainly, neither said sections of law, nor said regulation, can have any application to an alien like Stapf who had not "departed from a foreign port or place" but who merely returned to his home port in accordance with the terms of the shipping articles under which he departed from a "domestic" port destined for that same port at the termination of his services.

Finally, notwithstanding all of the foregoing, the Ninth Circuit Court of Appeals, in *Matsutaka* v. *Carr*, 47 F. (2d) 601, holds, and we contend rightly, in con-

flict with the Second Circuit Court of Appeals on this important question, and says:

> "The question for decision is this: Is an alien seaman who had resided in the United States for a period barring his deportation for an illegal entry entitled to re-enter the United States upon his return from a fishing voyage in foreign waters as a member of the crew of an American fishing vessel? This question was answered in the affirmative by this Court in *Weedin* v. *Okada*, 2 Fed. (2d) 321, and that decision has been generally followed by the district courts of this circuit. The government concedes this, but earnestly insists that the doctrine announced by this court in the *Okada case* was in effect overruled by the Supreme Court in *U. S. ex rel. Claussen* v. *Day*, 279 U. S. 398. *With this contention we are unable to agree.* * * * Deportation was sought in the *Okada case* because of an *unlawful entry* into the United States, whereas in the *Claussen case* deportation was sought *because of the commission of a crime* involving moral turpitude *within five years after entering.* The Supreme Court held that the return to the United States at the close of the voyage to South American and Cuban ports was an entry within the meaning of the limitation provisions of Section 19 of the Immigration Act of 1917 (8 U. S. C. 155). But the *legality* of that entry was not considered, the Court stating:
>
> " 'It is immaterial whether he was entitled to admission or whether he lawfully entered. The cause for which his deportation was ordered arose after entry.'

> In other words, in the *Claussen case* the Court was only concerned with the *fact* of entry, while in this case we are chiefly concerned with the *right* of entry." (Our italics.)

In view of the dissimilarity between the *Claussen case* and the case at bar, the principles established in *Weedin* v. *Okada, Petition of Hersvik, ex Parte Nagata* and *Matsutaka* v. *Carr, supra,* should govern.

WHEREFORE it is respectfully prayed that the orders of the courts below be reversed and that the writ of habeas corpus be sustained.

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York City.*